IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 134 OF 2004

Sangappa V. Tenginakai
r/o Camarcazana, Mapusa,
(House No.8). .... Appellant

V/s

1. Rajendra Pednekar
r/o Near Laxmi Temple,
Mapusa-Goa.

2. Francis V. Pereira,
r/o Canca, Tivim.

3. New India Insurance,
at Caskar Bldg., Mapusa.

4. Felix Fernandes,
r/o. Madhala Maz, Mandrem. .... Respondents

Appellant in person.
Mr. V. Menezes, Advocate for Respondent No.1.
Mr. M.S. Joshi, Advocate for Respondent No.3.
Mr. V.S.N. Alournekar, Advocate for Respondent No.4.

CORAM : N.A. BRITTO, J.

DATE : 17th AUGUST, 2007

ORAL JUDGMENT :

Heard the Appellant in person.

2. The Appellant has stated that he does not wish to avail the services of a free legal aid Counsel. Shri A.F. Diniz who was earlier appointed as Amicus Curiae, is stated to have withdrawn from this appeal.

3. The order dated 9/07/2004 need not be recalled in view of the judgment of the Apex Court in ***Yallwwa (Smt.) & Others V/s. National Insurance company Ltd. (2007 (4) Mh. LJ 543),*** cited by Shri Menezes. By consent heard forthwith.

4. The Appellant is Claimant in Claim Petition No. 24 of 2002. This appeal is filed by the him (Claimant, for short) against the order dated 01/06/2004 of the learned MACT, Mapusa dismissing his application filed under Section 140 of the M.V. Act, 1988.

5. The Claimant met with an accident on 7/04/1997 involving the cycle driven by him and the motorcycle driven by Respondent No.1, owned by Respondent No.2 and insured with Respondent no.3 and who are the respondents in the said claim petition.

6. The Claimant was examined at the Asilo Hospital on the same day, and according to the Claimant, he was examined by one Dr. Seema Natekar at Asilo hospital, and was found with a CLW on the left knee and another CLW on the scalp, both the injuries being simple in nature. Thereafter, the claimant filed the claim petition in the year 2002 and produced a disability certificate issued by Dr. Shyam Talwadkar issued in the year 2003, which states that the claimant was examined for disability sustained due to vehicular

accident in the year 1997 and that he has a permanent disability of 6% due to moderate pain in the left knee.

7. The learned MACT has dismissed the application stating that there is no nexus between the injury sustained by the Claimant and the disability as certified by Dr. Talwadkar and moderate pain in the left knee would not amount to permanent disability within the parameters of Section 142 of the said Act.

8. Admittedly, the accident took place on 7/04/1997 and at that stage when the claimant was examined by the medical officer, what was noted by him, was a CLW on the left knee of the claimant which was certified as a simple injury. There was no fracture, nor damage to any tendon. In terms of Section 142 of the Act, in order to have a permanent disablement, there must be, inter alia, the destruction or permanent impairing of the powers of any number or joint. The certificate of Dr. Talwadkar is totally silent on this aspect. The claimant was subsequently examined almost after a gap of 5 years, in the year 2003 and as per the certificate issued by Dr. Shyam Talwadkar, the claimant had moderate pain which he assessed as 6% disability. Dr. Shyam Talwadkar has not stated whether there was any difficulty in the knee movement or restriction of flexion of the knee so as to certify that there was permanent disability of 6%. Apparently, the claimant

was not treated by Dr. Shyam Talwadkar earlier. The certificate issued by Dr. Shyam Talwadkar cannot be accepted as prima facie proof that the claimant had disability of 6%, in the absence of any mention being made on it about the nature of disability suffered by the claimant. Mere pain without anything more cannot be considered as permanent disability. Moreover, what had been certified by him certainly could not be attributed to an accident which had taken place 5 years before. In such a situation, no fault can be found with the impugned order for rejecting the Claimant's application. Claimant is always at liberty to prove that he had permanent disability at the trial, considering the peculiar facts of the case, as stated herein above.

9. Therefore, I find there is no merit in this appeal and, accordingly, the same is hereby dismissed.

10. The claimant seeks leave to appeal to the Hon'ble Supreme Court. This is not a fit case to grant any such leave.

N.A. BRITTO, J.

NH/-